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UNCLAS GUATEMALA 000307

SIPDIS

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SUBJECT: GUATEMALA STRENGTHENS TIP LAW

1. Summary: Guatemala's Congress approved strong anti-TIP legislation that will aid GOG efforts to investigate, prosecute, and convict those engaged in trafficking. The new law includes a much broader and more effective definition of trafficking that will aid police and prosecutors and much stiffer penalties that will aid judges in sentencing. This welcome achievement was achieved through an inter-agency consultative process that we consider a best practice. End summary.

Strengthening laws on TIP  
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2. The Guatemalan Congress approved a Penal Code reform on February 2 to strengthen Government of Guatemala (GOG) efforts to combat trafficking in persons (TIP). The new language to Article 194 of the Penal Code states that "Whomever obliges, promotes, induces, facilitates, finances, collaborates, or participates in the transport, transfer, acceptance, or reception of people, obtaining an economic gain, commits the crime of trafficking in persons and must serve prison time."

3. In addition to broadening the definition of TIP, the new law strengthened the punishments available to judges upon sentencing. The new law establishes prison sentences of between seven and twelve years for those found guilty of trafficking, up from the previous range of one to three years. Moreover, punishments under the new law are automatically increased by one third if the victim is a minor and by two thirds if the victims suffer physical harm.

4. This language greatly strengthens Guatemala's Penal Code in regard to TIP issues. The previous language only considered the limited aspect of women crossing national borders for the purposes of prostitution. The revision not only expands the definition of who would be guilty of trafficking, but also removes the limitation that only women can be victims and that the trafficking must be for the purpose of prostitution. Furthermore, under the old law prison sentences were not mandatory. Indeed, none had ever been imposed.

5. Prosecutors tell us that the need to prove the intent of prostitution was a significant block to achieving convictions. For this reason, convictions tended to be for the lesser charge of pandering, which only merited a fine. According to the prosecutors, the new ruling provides an important prosecutorial tool.

Comment  
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6. We have been promoting this legislation for over six months and are pleased that it was approved unanimously. The new legislation greatly improves the GOG's capacity to prosecute traffickers. We were also impressed by the GOG process used to achieve this landmark legislation. The inter-agency working group on TIP legislation included a broad range of GOG agencies, in addition to NGOs, International Organizations, and this Mission. We recommend this approach as a best practice, and note that the working group will continue to meet to refine broader legislative proposals in regard to TIP.  
HAMILTON